

30.217 Unauthorized structures. All permanent alterations, deposits or structures affecting navigable waters, other than boathouses, which were constructed before December 9, 1977 and which did not require a permit at the time of construction, shall be presumed in conformity with the law, ~~unless a written complaint is filed within 180 days of December 9, 1977.~~ Upon the filing of a complaint, the department shall proceed with an action to enforce the applicable statutes.

NOTE: The time period for filing a written complaint has long since expired, and has no bearing on current structures.

SECTION 56. 30.123 (title) of the statutes is repealed and recreated to read:

30.123 (title) Bridges prohibited without a permit; exceptions.

SECTION 57. 30.123 (1) of the statutes is renumbered 30.213 (1) and amended to read:

30.213 (1) Municipalities which construct or reconstruct highway bridges shall not be required to obtain permits under this section or s. ~~30.10 or 30.12 or 30.123~~ for such the construction or reconstruction. All municipal highway bridges shall be constructed or reconstructed in accordance with standards developed under s. 84.01 (23).

SECTION 58. 30.123 (2) to (4) of the statutes are repealed and recreated to read:

30.123 (2) PERMIT REQUIRED. Unless a permit has been granted by the department under this section, no person may construct or maintain a bridge in, on or over navigable waters.

(3) EXCEPTIONS. Subsection (1) does not apply to the following:

(a) Highway bridges constructed or reconstructed under s. 30.213 by municipalities.

(b) Bridges constructed and maintained by the department of transportation under s. 30.12 (4).

(4) PERMITS TO CONSTRUCT OR MAINTAIN A BRIDGE. (a) A person may apply to the department for a permit to construct or maintain a bridge for which a permit is required under sub. (1).

(b) The notice and hearing provisions of s. 30.245 apply to a permit applied for under this section except that no notice and hearing is required for a bridge that would cross navigable waters less than 35 feet wide.

(c) The department shall grant a permit applied for under this section if it finds that the bridge:

1. Will not materially obstruct navigation;
2. Will not materially reduce the effective flood flow capacity of a stream; and
3. Will not be detrimental to the public interest.

SECTION 59. 30.123 (5) of the statutes is repealed.

NOTE: This repeals a requirement that bridges constructed over navigable streams be maintained in a safe condition, as determined by the DNR. The DNR does not have the expertise to review bridge safety and maintenance.

SECTION 60. 30.124 of the statutes, as affected by 2001 Wisconsin Act 16, is renumbered 30.351 and 30.351 (1) (intro.), as renumbered, is amended to read:

30.351 (1) Notwithstanding ss. 30.12, 30.20, 30.44, and 30.45, and if the department finds that the activity will not adversely affect the public interest or private rights or interests in fish and wildlife populations, navigation, or waterway flood flow capacity and will not result in environmental pollution, as defined in s. 299.01 (4), the department may do all of the following on public lands or waters:

SECTION 61. 30.1255 (title) and (1) and (3) of the statutes are renumbered 30.91 (title) and (1) and (3).

SECTION 62. 30.1255 (4) of the statutes is repealed.

NOTE: The repealed provision directs DNR to expend moneys in fiscal years 1999–2000 and 2000–01 for educational activities regarding aquatic nuisance species.

SECTION 63. 30.126 (title) and (2) to (9) of the statutes are renumbered 30.265 (title) and (2) to (9) and 30.265 (5) (g), as renumbered, is amended to read:

30.265 (5) (g) *May not have improper flotation devices.* No person may construct, place or maintain a fishing raft on authorized portions of the Wolf River unless each flotation device used on the fishing raft is clean and uncontaminated, properly attached to the fishing raft and properly maintained in conformity with minimum standards established by the department by rule. The department shall establish minimum standards for the condition, attachment and maintenance of flotation devices used on fishing rafts. This paragraph applies to any device used to provide flotation for a fishing raft, including each individual barrel or styrofoam coffin.

SECTION 64. 30.126 (10) of the statutes is renumbered 30.381 (4) and amended to read:

30.381 (4) ~~PENALTIES~~ FISHING RAFTS. (a) *Violation of statute, rule or department order.* A person who violates ~~this section, any rule promulgated under this section s. 30.265~~ or any order issued by the department under ~~this section s. 30.265~~ shall forfeit not less than \$10 nor more than \$250 for each offense. Each day of violation constitutes a separate offense.

(b) *Violation of municipal ordinance or order.* A person who violates any ordinance adopted or order issued by the municipality under ~~this section s. 30.265~~ is subject to the penalty established by ordinance. A Wolf River municipality may

not establish this penalty at a level which is less severe than the penalty established under par. (a).

SECTION 65. 30.13 (title) and (1) (c) of the statutes are amended to read:

30.13 (title) Regulation of wharves, piers and swimming rafts; establishment of pierhead lines. (1) (c) The wharf or pier does not extend beyond any pierhead line which is established under ~~sub. (3)~~ s. 30.323.

SECTION 66. 30.13 (3) (title) of the statutes is renumbered 30.323 (title).

SECTION 67. 30.13 (3) of the statutes is renumbered 30.323 (1) and 30.323 (1) (a), as renumbered, is amended to read:

30.323 (1) (a) Any municipality authorized by s. ~~30.11~~ 30.321 to establish a bulkhead line may also establish a pierhead line in the same manner as it is authorized to establish a bulkhead line, except that a metes and bounds legal description is not required nor is the map required to be prepared by a registered land surveyor and except that if the municipality has created a board of harbor commissioners the municipality must obtain the approval of the board concerning the establishment of the pierhead line in addition to obtaining the approval of the department.

SECTION 68. 30.13 (4) (c) of the statutes is amended to read:

30.13 (4) (c) *Extends beyond pierhead line; exception.* A wharf or pier which extends into navigable waters beyond any pierhead line established under ~~sub. (3)~~ s. 30.323 constitutes an unlawful obstruction of navigable waters unless a valid permit, license or authorization for the wharf or pier is granted or unless it is a permissible preexisting wharf or pier. A wharf or pier is a permissible preexisting wharf or pier if it existed prior to the establishment of the pierhead line, if it is not extended or expanded after that date and if the ownership of the land to which it is

attached did not change after that date except that a wharf or pier continues its status as a permissible preexisting wharf or pier for one year after the date the change of ownership is recorded. The seasonal removal of a wharf or pier does not affect its status as a permissible preexisting wharf or pier if it is reestablished in substantially the same form. Status as a permissible preexisting wharf or pier does not imply that authorization for the wharf or pier is provided for the purposes of par. (a) or (b). The owner of a wharf or pier may submit evidence to the municipality that it is a permissible preexisting wharf or pier at any time after the municipality establishes the pierhead line.

SECTION 69. 30.13 (6) of the statutes is renumbered 30.323 (2).

SECTION 70. 30.131 of the statutes is renumbered 30.283 and 30.283 (1) (intro.) and (f) and (2), as renumbered, are amended to read:

30.283 (1) (intro.) Notwithstanding s. ~~30.133~~ 30.095, a wharf or pier of the type which does not require a permit under ss. 30.12 (1) and 30.13 that abuts riparian land and that is placed in a navigable water by a person other than the owner of the riparian land may not be considered to be an unlawful structure on the grounds that it is not placed and maintained by the owner if all of the following requirements are met:

(f) The placement of the wharf or pier complies with the provisions of this chapter, ~~with any rules promulgated under this chapter~~ subchapter and with any applicable municipal regulations or ordinances.

(2) Notwithstanding s. ~~30.133~~ 30.095, an easement under sub. (1) may be conveyed if it is conveyed at the same time, and to the same person, that the land to which the easement is appurtenant is conveyed.

SECTION 71. 30.133 of the statutes is renumbered 30.095.

SECTION 72. 30.135 (2) (a) and (4) of the statutes are amended to read:

30.135 (2) (a) Upon receipt of a complete permit application, the department shall either order a hearing or provide notice stating that it will proceed on the application without a hearing unless a substantive written objection to issuance of the permit is received within 30 days after publication of the notice. The department shall provide a copy of the notice to the applicant for the permit, ~~the clerk of each municipality in which the water ski platform or water ski jump is to be located~~ each local governmental unit under s. 30.04 (4) and to any other person required by law to receive notice. The department may provide notice to other persons as it considers appropriate. The applicant shall publish the notice as a class 1 notice under ch. 985 in a newspaper designated by the department that is likely to give notice in the area affected. The applicant shall file proof of publication with the department.

(4) EXEMPTION. Section ~~30.02~~ 30.245 does not apply to permit applications submitted under this section.

SECTION 73. 30.14 (title) of the statutes is repealed.

SECTION 74. 30.14 (1) of the statutes is renumbered 30.327.

SECTION 75. 30.14 (2) of the statutes is renumbered 30.247 and amended to read:

30.247 Hearings by department. Upon complaint by any person to the department that any wharf, pier or other structure exists in navigable water in violation of s. 30.12 or 30.13 or ~~30.207~~ 30.223 or that any wharf, pier or other structure proposed to be built in navigable water will violate s. 30.12 or 30.13 or ~~30.207~~ 30.223, the department shall investigate and may hold a hearing to determine whether the wharf, pier, or other structure is or would be in violation of

those sections. If no hearing is held, the complainant shall be informed of the results of the investigation.

SECTION 76. 30.15 (title) of the statutes is repealed.

SECTION 77. 30.15 (1) (intro.) and (a) to (c) of the statutes are renumbered 30.98 (1) (intro.) and (a) to (c).

SECTION 78. 30.15 (1) (d) of the statutes is renumbered 30.381 (5) and amended to read:

30.381 (5) ~~Constructs~~ Any person who constructs or places any structure or deposits any material in navigable waters in violation of s. 30.12 or 30.13 shall forfeit not less than \$100 nor more than \$500 for each offense. Each day during which a structure or deposit exists in violation of this subsection is a separate offense.

SECTION 79. 30.15 (3) of the statutes is renumbered 30.98 (2).

SECTION 80. 30.16 of the statutes is renumbered 30.95.

SECTION 81. 30.18 of the statutes is repealed and recreated to read:

30.18 Diversion of water from lakes and streams. (1) DEFINITIONS. In this section:

(a) “Authorized base level of water loss” has the meaning given under s. 281.35 (1) (b).

(b) “Water loss” has the meaning given under s. 281.35 (1) (L).

(c) “Withdrawal” has the meaning given under s. 281.35 (1) (m).

(2) PERMIT REQUIRED. (a) *Streams*. Unless a permit has been granted by the department under this section, no person may divert water from a stream if:

1. The diversion is for the purpose of maintaining or restoring the normal level of a navigable lake or the normal flow of a navigable stream, regardless of whether

the lake or stream is located within the watershed of the stream from which the water is diverted.

2. The diversion is for the purpose of agriculture or irrigation.

(b) *Streams or lakes.* Unless a permit has been granted by the department under this section, no person may divert water from a lake or stream if the diversion will result in a water loss averaging 2,000,000 gallons per day in any 30-day period above the person's authorized base level of water loss. This paragraph does not apply to a person required to obtain an approval under s. 281.41.

(3) (a) *Permits for diversions of water.* A person may apply to the department for a permit to divert water from lakes or streams for which a permit is required by sub. (2).

(b) The notice and hearing provisions of s. 30.245 apply to a permit applied for under this section, but not if a hearing on the application under this section is conducted as part of a hearing under s. 293.43.

(c) In addition to the notice requirements of par. (b), the department shall mail a copy of the notice under par. (b) to:

1. Each owner of land over which water is proposed to be diverted.
2. Each local governmental unit under s. 30.04 (4).
3. The clerk of the municipality that is the next municipality downstream from the point of the proposed diversion.
4. The clerk of each municipality in which the lake or stream from which water is proposed to be diverted is located and which is adjacent to any municipality in which the diversion will take place.
5. Each person specified in s. 281.35 (5) (b) or (6) (f), if applicable.

(d) An application for a diversion of water under sub. (2) (a) 2. shall include the following:

1. Written statements of consent to the diversion from all riparian owners who are making beneficial use of the water proposed to be diverted.

2. Evidence of permission or authority to enter any land through which it is proposed to divert the water for the purposes of obtaining information required for drafting the plans for the project.

(e) The department shall grant a permit applied for under sub. (2) (a) if the department determines that:

1. The proposed diversion is for use on riparian land.

2. The proposed diversion will not be detrimental to the public interest.

3. The water to be diverted is either not being beneficially used or all riparians who may be adversely affected by the diversion have consented to the proposed diversion.

(f) The department shall grant a permit applied for under sub. (2) (b) if the grounds for granting a permit under s. 281.35 (5) (d) are met and, if a permit is also required under sub. (2) (a), if the department makes the determination in par. (a).

(4) PERMIT CONDITIONS; REPORTING; REVIEW. (a) The department shall specify on each permit issued under the section the quantity of water that may be diverted and the times during which water may be diverted. If the permit is issued under sub. (2) (b), the permit shall also specify the factors enumerated in s. 281.35 (6).

(b) A person granted a permit under this section shall report to the department the volume and rate of withdrawal and the volume and rate of water loss in the form and at the times specified by the department.

(c) If the permit was required under sub. (2) (a) but not under sub. (2) (b) and the permit was issued on or after August 1, 1957, the department shall review the permit at least once every 5 years. If the permit was required under sub. (2) (b), the department shall review the permit as required under s. 281.35 (6) (b).

(d) A person issued a permit for the purpose of irrigation or agriculture may use the water on land contiguous to the permittee's riparian land, but may not withdraw more water than the permittee withdrew before August 1, 1957 unless the department approves the additional amount withdrawn by modifying the permittee's permit.

(5) REVOCATION. (a) The department shall revoke a permit issued under sub. (3) (e) which is not subject to sub. (2) (b) if it finds:

1. That the water being diverted is no longer water that is not being beneficially used, unless all riparians adversely affected by the diversion continue to consent to it; or

2. If the diversion is from a stream designated by the department as a trout stream, that the revocation is desirable for conservation purposes.

(b) The department may revoke a permit issued under sub. (3) (e) that is not subject to sub. (2) (b) if it finds that the diversion is detrimental to the stream from which the water is diverted.

(c) The department may revoke a permit issued under sub. (3) (f) only as provided under s. 281.35 (6).

(6) PREREQUISITES TO PROJECT CONSTRUCTION. No work shall be commenced on the canal, headworks or other structures necessary for the project until the plans for those structures have been approved by the department. Any person having received a permit required under sub. (2) (a) may construct upon the land of another the canal

and other works authorized by the permit after the damage which will be sustained by the owner or owners of such land has been satisfied, or has been determined as provided for in ch. 32, and after the final sum so determined and all costs have been paid to the persons entitled thereto or to the clerk of the circuit court on their account.

NOTE: Current s. 30.18 (7) allows the applicant to “enter any land through which it is proposed to divert water”, after the permit application is filed, to conduct surveys. This provision is deleted, and replaced by a requirement in new s. 30.18 (3) (d) for the applicant to obtain permission or authority to enter the land.

SECTION 82. 30.19 of the statutes is repealed and recreated to read:

30.19 Enlargement and protection of waterways. (1) **DEFINITION.** In this section, “artificial water body” means a proposed or existing body of water that does not have a history as part of a lake or stream.

(2) **PERMITS REQUIRED.** Unless a permit has been granted by the department or authorization has been granted by the legislature, it is unlawful:

(a) To construct, dredge or enlarge any artificial water body that connects with a navigable waterway or where any part of the artificial water body is located within 500 feet of the ordinary high-water mark of a navigable waterway.

(b) To connect a navigable waterway or artificial water body with a navigable waterway by a navigable surface channel.

(c) To grade or remove top soil from the bank of a navigable waterway where the area exposed will exceed 10,000 square feet.

(3) **EXCEPTIONS.** Subsection (2) does not apply to:

(a) The construction and repair of public highways.

(b) Agricultural uses of land.

(c) Work required to maintain the original dimensions of an enlargement of a waterway authorized under sub. (2) (a) or (b).

(4) PERMITS FOR PROJECTS IN OR NEAR WATERWAYS. (a) A person may apply to the department for a permit to engage in activities otherwise prohibited under sub. (2).

(b) The notice and hearing provisions of s. 30.245 apply only to permit applications under sub. (2) (b) and to permit applications under sub. (2) (c) in which there is an effect on navigable waters other than the effect on water quality. In addition to the notice under s. 30.245, notice shall also be provided to the following:

NOTE: This provision continues the applicability of notice and hearing provisions only to permit applications under sub. (2) (b) and (c). Under the current statute, the notice and hearing is not required for dredging artificial water bodies for the purpose of connection to a navigable waterway or where part of the artificial water body is within 500 feet of the ordinary high-water mark of the navigable waterway. In addition, an exemption from the notice and hearing is provided for grading or removing topsoil from the bank of navigable waters where the only effect is on water quality. Also, a "short form" permit is provided for grading or removing topsoil where advance notice is given to the department and the work conforms to rules of the department that describe methods for such work.

1. Each local governmental unit under s. 30.04 (4).
2. The clerks of the municipalities in which the project or affected body of water is located.
3. The secretary of any property owner's associations formed with respect to the bodies of water affected by the project. If no property owner's association exists, notice shall be given to at least 5 persons who own property adjacent to the bodies of water affected by the project or to all such persons if fewer than 5 persons own property affected by the project.
4. The Milwaukee Metropolitan Sewerage District for any permit application for a project that would affect the Milwaukee River, the Menomonee River, the Kinnickinnic River, the Root River or any tributary of those rivers.

(c) The department shall grant a permit applied for under this section if it determines that:

1. The project will not be detrimental to the public interest.

2. The project will not cause environmental pollution as defined in s. 299.01 (4).
3. Any enlargement connected to a navigable waterway complies with laws relating to the platting of land and sanitation.
4. No material injury will result to the rights of riparian owners of land on a natural or artificial water body affected by the project.

(5) **PERMIT CONDITIONS.** A permit to construct an artificial waterway and connect it to a navigable waterway under this section shall provide that the artificial waterway shall be a public waterway.

NOTE: Current s. 30.19, which requires a permit for enlargement and protection of waterways, contains an exception for navigable lakes and streams and any portion of Lake Michigan within Milwaukee County. This exception is not included in this draft so that s. 30.19 will apply uniformly to all navigable waters.

SECTION 83. 30.195 of the statutes is repealed and recreated to read:

30.195 Changing of stream courses. (1) **PERMIT REQUIRED.** (a) Unless a permit has been granted by the department under this section or a statute expressly authorizes the activity, no person may change the course of or straighten a navigable stream.

(2) **PERMIT TO CHANGE STREAM COURSE.** (a) A person may apply to the department for a permit to engage in activities for which a permit is required under sub. (1).

(b) The notice and hearing provisions of s. 30.245 apply to permit applications under this section that involve relocation of more than 500 feet of stream length.

(c) The department shall grant a permit applied for under this section if it determines that:

1. The applicant is the owner of land upon which the stream is located.
2. The proposed change in course or straightening of the stream will improve the economic or aesthetic value of the applicant's land.

3. The proposed change in course or straightening of the stream will not adversely affect the flood flow capacity of the stream or otherwise be detrimental to the public interest.

4. The proposed change in course or straightening of the stream will not be detrimental to the rights of other riparians located on the stream or all such riparians have consented to approval of the application.

NOTE: It is not clear whether current s. 30.195 is subject to the requirement of a notice and hearing. Current s. 30.02 provides that the notice and hearing provisions of that statute apply in any proceeding under ch. 30 where public notice is required. Under s. 30.195 (3), the DNR may issue a permit either on its own motion or after a public hearing. This does not appear to be a clear statement that a public hearing is required, and it is therefore uncertain whether the notice and hearing requirement of current s. 30.02 applies. This draft makes the permit under s. 30.195 subject to the notice and hearing requirements of new s. 30.245 for relocation of more than 500 feet of stream length, which corresponds with the division between type II and type III actions regarding stream locations for environmental review under ch. NR 150, Wis. Adm. Code.

This draft eliminates the current provision in s. 30.195 (4) that states that no common law liability and no liability under any other statute for damages resulting from the change in the course of the stream or straightening a stream is affected by s. 30.195. Nothing in current s. 30.195, or s. 30.195 as amended by this draft, suggests that an exemption from liability is created. Compliance with the provisions in a permit under s. 30.195 may have a bearing on the issue of negligence, but current s. 30.195 (4) is unnecessary. Also, the provision in the current statute that creates a presumption of exercising due care in complying with a permit is better addressed by the court as part of a negligence action.

The exception for land owned by Milwaukee County or a city, village or town in Milwaukee County is deleted. This provision was originally created as part of s. 30.195 when it was adopted in 1961, and was added as a floor amendment. This exception is not included in this draft so that s. 30.195 will apply uniformly to all navigable waters.

SECTION 84. 30.196 of the statutes is renumbered 30.313 and 30.313 (intro.), as renumbered, is amended to read:

30.313 (intro.) A municipality may enclose navigable waters by directing, placing or restricting navigable waters into an enclosed drain, conduit, storm sewer or similar structure if the department grants the municipality a permit. The department may grant this permit to a municipality after following the notice and hearing requirements under s. 30.02 (3) and (4) 30.245 if it finds that granting the permit:

SECTION 85. 30.20 of the statutes is repealed and recreated to read:

30.20 Removal of material from beds of navigable waters. (1) **CONTRACT REQUIRED.** (a) Unless a contract has been entered into with the department under this section, no person may remove material from the bed of a navigable lake or from the bed of outlying waters of this state.

(b) Unless a permit has been granted by the department, no person may remove material from the bed of a lake or stream not described in par. (a).

(2) **EXCEPTION.** The exception from sub. (1) (a) for the removal of material from a farm drainage ditch, as provided in s. 30.215, does not apply if the department finds that the proposed removal may have a long-term adverse effect on cold-water fishery resources or may destroy fish spawning beds or nursery areas. A person who proposes to remove material that may be exempt from the permit requirement under this paragraph but that may affect cold-water fishery resources, fish spawning beds or nursery areas shall notify the department at least 10 days prior to the removal.

(3) **CONTRACTS AND PERMITS.** (a) The department may enter into a contract on behalf of the state for removal and lease or sale of material for which a contract is required under sub. (1) (a) if the contract is consistent with public rights. Each contract under this paragraph shall contain any conditions that are necessary for the protection of the public interest and the interest of the state. Each contract under this paragraph shall also fix the amount of compensation to be paid to the state for the material removed, except no compensation shall be required for material provided under contract with a municipality, as defined in s. 281.01 (6), if the material is to be used for a municipal purpose and not for resale. No contract entered under this paragraph may run for more than 5 years.

(b) The department may enter into a contract on behalf of the state for removal and lease or sale of minerals, ore and materials from beneath the bed of public trust waters if the contract would be consistent with public rights and if the waters would not be disturbed in the removal operation. Each contract under this paragraph shall contain any conditions that are necessary for the protection of the public interest and the interests of the state. Each contract under this paragraph shall also fix the amount of compensation to be paid to the state for the material, mineral and ore removed. Should any doubt exist as to whether the state in fact owns such lake bed or stream bed such contract or lease shall be for such interests, if any, as the state may own. Title to the royalties to be paid when mining operations are begun shall be determined at such future time as royalties for ore so sold are paid or are due and payable. No contract entered under this paragraph may run for more than 75 years.

(c) The department may grant a permit to remove material from the bed of a lake or stream not described in sub. (1) (a) if the permit will be consistent with the public interest in the water affected by the removal. A permit under this paragraph may be granted by the department for up to 10 years if the applicant notifies the department at least 30 days before removing any material.

(d) The notice and hearing provisions of s. 30.245 apply to permit or contract applications under this section that involve the removal of 3,000 cubic yards or more of material except when restoring the original dimensions of an area legally dredged during the 10 years prior to the date of application.

NOTE: Current s. 30.20 does not contain a requirement for public notice or a hearing under s. 30.20. This draft makes a permit or contract under s. 30.20 subject to the notice and hearing requirements of new s. 30.245 for dredging that involves the removal of more than 3,000 cubic yards, which corresponds with the threshold for a type II action for purposes of environmental review under ch. NR 150, Wis. Adm. Code.

SECTION 86. 30.202 of the statutes is renumbered 30.333 and 30.333 (3), as renumbered, is amended to read:

30.333 (3) EXEMPTION FROM STATUTES AND RULES. Dredge spoil disposal activities authorized under sub. (2) are exempt from any prohibition, restriction, requirement, permit, license, approval, authorization, fee, notice, hearing, procedure or penalty specified under this chapter or s. 29.601, 30.01 to 30.20, 30.21 to 30.99, 59.692 or 87.30 or chs. 281 to 285 or 289 to 299, except s. 281.48, or specified in any rule promulgated, order issued or ordinance adopted under those sections or chapters.

SECTION 87. 30.2025 of the statutes, as created by 2001 Wisconsin Act 16, is renumbered 30.278.

SECTION 88. 30.2026 of the statutes, as created by 2001 Wisconsin Act 16, is renumbered 30.279 and 30.279 (2) (d) and (3) (a), as renumbered, are amended to read:

30.279 (2) (d) The village of Belleville shall create any artificial barrier under this section in compliance with all state laws that relate to navigable bodies of water, except s. 30.12 (1) and (2) (3).

(3) (a) The village of Belleville shall maintain any artificial barrier created as authorized under sub. (1). If a landowner of more than 500 feet of Lake Belle View shoreline, a portion of which is located within 1,000 feet of any such artificial barrier, is dissatisfied with the manner in which the village of Belleville is maintaining the barrier, the owner may maintain the barrier in lieu of the village, upon approval of the department. The village or a landowner who maintains the barrier shall comply with all state laws that relate to navigable bodies of water, except s. 30.12 (1) and (2) (3). The department may require the village of Belleville or the landowner to maintain the barrier in a structurally and functionally adequate condition.

SECTION 89. 30.203 of the statutes is renumbered 30.355.

SECTION 90. 30.2035 of the statutes is repealed.

NOTE: The repealed statute requires the DNR to undertake a shoreline protection study. This report has been issued and the DNR is in the process of promulgating rules.

SECTION 91. 30.2037 of the statutes is renumbered 30.267.

SECTION 92. 30.204 of the statutes, as affected by 2001 Wisconsin Act 16, is renumbered 30.373 and 30.373 (5), as renumbered, is amended to read:

30.373 (5) EXEMPTION FROM CERTAIN STATUTES AND RULES. Activities of the department in conducting the lake acidification experiment are exempt from any prohibition, restriction, requirement, permit, license, approval, authorization, fee, notice, hearing, procedure or penalty specified under this subchapter and subchs. I, V, and VI and s. 29.601 (3), ~~30.01 to 30.03, 30.06 to 30.16, 30.18 to 30.29, 30.50 to 30.99,~~ 59.692, 87.30, 287.81, 299.15 to 299.23, 299.91, 299.95 or 299.97 or chs. 281, 283 or 289 to 292 or specified in any rule promulgated, order issued or ordinance adopted under any of those sections or chapters.

SECTION 93. 30.205 of the statutes is renumbered 30.335. ✓

SECTION 94. 30.206 of the statutes is renumbered 30.221 and 30.221 (1) and (7), as renumbered, are amended to read:

30.221 (1) For activities which require a permit or approval under ss. 30.12 ~~(3)~~ (4) (a) and 30.19 ~~(1)~~ (2) (a), the department may issue a general permit authorizing a class of activities, according to rules promulgated by the department. Before issuing general permits, the department shall determine, after an environmental analysis and notice and hearing under ss. 227.17 and 227.18, that the cumulative adverse environmental impact of the class of activity is insignificant and that issuance of the general permit will not injure public rights or interest, cause

environmental pollution, as defined in s. 299.01 (4), or result in material injury to the rights of any riparian owner.

(7) This section does not apply to an application for a general permit for the Wolf River and Fox River basin area or any area designated under s. ~~30.207~~ 30.223 (1m) if the application for the general permit may be submitted under s. ~~30.207~~ 30.223.

SECTION 95. 30.207 of the statutes, as affected by 2001 Wisconsin Act 16, is renumbered 30.223 and 30.223 (1), (3) (a), (4) (c) 1., (5) and (7) (a), as renumbered, are amended to read:

30.223 (1) GEOGRAPHICAL AREA. For purposes of this section and s. ~~30.12~~ (3) (bt) 30.276, the Wolf River and Fox River basin area consists of all of Winnebago County; the portion and shoreline of Lake Poygan in Waushara County; the area south of STH 21 and east of STH 49 in Waushara County; that portion of Calumet County in the Lake Winnebago watershed; all of Fond du Lac County north of STH 23; that portion of Outagamie County south and east of USH 41; that portion of Waupaca County that includes the town of Mukwa, city of New London, town of Caledonia, town of Fremont; and the portion and shoreline of Partridge Lake and the Wolf River in the town of Weyauwega.

(3) (a) Any local entity, as defined listed in s. 30.77 (3) ~~(dm)~~ [✓] (11) (a), any group of 10 riparian owners who will be affected by the issuance of a general permit, or any contractor who is or has been involved in the construction of structures or along navigable waters may apply for a general permit under this section.

(4) (c) 1. Any local entity, as defined in s. 30.77 (3) ~~(dm)~~ [✓] (11) (a), that has an interest in the quality or use of or that has jurisdiction over the navigable waters located in the proposed permit area.

(5) **HEARING REQUIREMENTS.** If an activity for which an application for which a general permit has been submitted would be subject to the hearing and notice provisions under s. ~~30.02 (3) and (4)~~ 30.245 for the issuance of an individual permit, the department shall comply with those provisions. Notice and hearing shall be required on an application for a general permit under this section only if a notice and hearing are required under s. ~~30.02 (3) and (4)~~ 30.245 for the activity as part of an application for an individual permit under this chapter.

(7) **ACTIVITIES UNDER GENERAL PERMITS.** (a) At least 15 days before beginning the activity that is authorized by a general permit under this section the person who wishes to conduct the activity shall submit a notice to the department and shall pay the fee specified in s. ~~30.28~~ 30.243 (2) (b) 2. The notice shall describe the activity, state the name of the person that will be conducting the activity and state the site where the activity will be conducted. The notice shall also contain a statement signed by the person conducting the activity that the person will act in conformance with the standards contained in the general permit.

SECTION 96. 30.21 of the statutes is renumbered 30.293.

SECTION 97. 30.213 (title) of the statutes is created to read:

30.213 (title) Municipal bridge construction.

SECTION 98. 30.215 of the statutes is created to read:

30.215 Farm drainage ditches. (1) **DEFINITION.** In this section, “farm drainage ditch” means any artificial channel that drains water from lands that are used for agricultural purposes.

(2) **EXEMPTION.** A project that is for an agricultural purpose and is located in or adjacent to a farm drainage ditch is exempt from the requirement for a permit or approval under this subchapter unless it is shown, by means of a U.S. geological

survey map or other reliable scientific evidence, that the farm drainage ditch was a stream that was public trust water prior to ditching.

(3) COLD WATER FISHERIES; FISH SPAWNING BEDS AND NURSERIES. The exemption in sub. (2) for the removal of materials under s. 30.20 is subject to the limitation in s. 30.20 (2).

NOTE: The current statute related to farm drainage ditches is as follows:

“30.10 (4) (c) Notwithstanding any other provision of law, farm drainage ditches are not navigable within the meaning of this section unless it is shown that the ditches were navigable streams before ditching. For purposes of this paragraph, “farm drainage ditch” means any artificial channel which drains water from lands which are used for agricultural purposes.”

The proposed redraft in new s. 30.215 differs in 2 key respects from the current statute. The primary difference is that the exemption clearly applies to a project for an agricultural purpose, not to the farm drainage ditch itself. Thus, a project for other than agricultural purposes would require a permit, even though the drainage ditch was originally constructed as and continues to be used as a farm drainage ditch.

The other difference is that the statute specifies the kind of evidence that may be used to show stream history.

The proposed language, in sub. (3), preserves the current restriction on removal of materials from farm drainage ditches, as it may affect cold water fisheries, or fish spawning beds or nurseries.

SECTION 99. 30.24 of the statutes is renumbered 30.357.

SECTION 100. 30.243 (3) (c) of the statutes is created to read:

30.243 (3) (c) This section does not apply to a permit issued under s. 30.221.

SECTION 101. 30.245 of the statutes is created to read:

30.245 Notice and hearing; mediation. (1) NOTICE AND HEARING; REQUIREMENT; OPTION. (a) The department shall apply the procedures in this section with respect to a permit or contract under this subchapter where the applicable statute requires notice and a hearing under this section.

(b) If the applicable statute for a permit or contract under this subchapter does not require notice and a hearing under this section, the department may apply the procedures in this section with respect to a permit or contract under this subchapter if it determines that the substantial interests of any party may be adversely affected

by the proceeding. This paragraph does not apply to any statute in which this section is specifically made in applicable.

(2) DEPARTMENT MAY DENY APPLICATION. The department may deny the application for a permit or contract under this subchapter after receipt of a complete permit or contract application. If the department denies an application, it shall notify the applicant. The applicant may request a contested case hearing within 30 days after receiving notice of the denial, where upon the department shall submit the file to the division of hearings and appeals. The procedures in sub. (6) apply to the hearing.

(3) NOTICE. (a) Except where the department denies an application under sub. (2), and except where specific notice or hearing provisions are provided in this subchapter, after receipt of a complete permit or contract application, the department shall provide notice that it has received the application. The notice shall describe the project and the procedures under this section. The department shall provide the notice to all of the following:

1. The applicant.
2. Each local governmental unit under s. 30.04 (4).
3. Any other person required by law to receive notice.

(b) The department shall post the notice on the Internet at a site determined or approved by the department.

(c) The applicant shall publish the notice as a class 1 notice in a newspaper designated by the department that is likely to give notice in the area affected. The applicant shall file proof of publication with the department. The department may authorize any other person to provide the notice.

(4) REQUEST FOR HEARING; ACTION ON REQUEST. (a) Any person may request a contested case hearing. The request for a hearing shall be in writing. If the person requesting a hearing is not the applicant, the request shall describe the requester's objection to the project. The objection shall contain all of the following:

1. A description of the legal issues with sufficient specificity so that the department may determine the standards in this subchapter that the objector believes may be violated if the project proceeds.

2. A description of the factual basis for the objection, with sufficient specificity so that it can be determined how the objector believes the project, as proposed, may violate the standards identified under subd. 1.

3. A commitment by the objector to appear and present information supporting the objection in a contested case hearing.

(b) The department shall proceed on the application without a hearing if any of the following apply:

1. The department does not receive a request for a contested case hearing within 30 days after the notice is published under sub. (3) (c).

2. The request for a hearing is not in the form required in par. (a).

3. The objection stated by the person requesting the hearing is not a substantive objection under par. (c).

(c) The department shall determine if the objection to the project as described under par. (a) is a substantive objection. The department may request additional information from a person requesting a hearing in order to make the determination under this paragraph, and the person requesting a hearing shall respond to the department's request within 2 weeks. An objection is substantive if it is sufficient for the department to make the following determinations:

1. The facts described by the objector appear to be substantially true.
2. The facts described by the objector raise reasonable doubts as to whether the project, as proposed, complies with the applicable standards in this subchapter.

(d) Except as provided in sub. (5), the department shall submit the file to the division of hearings and appeals if the request for a hearing complies with this subsection.

(5) MEDIATION. (a) Prior to a contested case hearing, the department shall allow for mediation between the applicant, any person who requests a contested case hearing on the permit or contract, any person with a substantial interest in the permit or contract, and the department, if those persons agree to mediation. The participants shall determine how the mediator is to be selected and compensated.

(b) If the participants determine that they cannot reach an agreement in mediation, any participant in the mediation may request a contested case hearing within 30 days after the conclusion of mediation. The request shall be in writing and shall include the information required in sub. (4) (a). The department shall submit the file to the division of hearings and appeals if the department receives the request within 30 days after the notice is published under this paragraph, and if the request for a hearing complies with sub. (4) (a) and (c).

(c) The department shall proceed on the application if it does not receive a request for a hearing under par. (b).

(6) HEARING. (a) Upon receiving the file from the department, the division of hearings and appeals shall order a contested case hearing. The hearing shall be conducted within 60 days after the hearing is ordered.

(b) The division of hearings and appeals shall mail a written notice at least 10 days before the hearing to each person given notice under sub. (3) and to any person who submitted a request for a hearing.

(c) The applicant shall publish a class 1 notice under ch. 985 of the hearing in a newspaper designated by the department that is likely to give notice in the area affected. The notice shall be published at least 10 days before the hearing. The applicant shall file proof of publication under this paragraph with the hearing examiner at or prior to the hearing.

NOTE: The notice and hearing provisions in current s. 30.02 are repealed and recreated here. The basic structure of this statute remains the same: the notice and hearing procedures apply to any permit or contract in which a notice and hearing is required by direct cross-reference to this section. In any other statute that provides a permit or contract for activities in navigable waters, the DNR may apply the notice and hearing procedures if the substantial interests of any party may be adversely affected by the proceeding. The statute provides a time frame within a contested case hearing may be requested and requires various notices to be mailed or published.

Proposed s. 30.245 has several major additions compared to the current statute. The first difference is that the current statute does not expressly provide that the DNR may deny the application for a permit or contract. The current statute requires the DNR either to schedule a hearing or issue notice that it will proceed without a hearing unless a request for hearing is made. As a result, an individual who opposes a permit must request a hearing, even if the DNR expects to deny the application. The new procedure allows the DNR to deny the application for a permit or contract, and the applicant may request a contested case hearing on this decision.

The 2nd difference is that the DNR is directed to post notice of the complete permit or contract application and the opportunity to request a hearing on the Internet. In addition, a provision in the current statute requiring the DNR to provide notice to any person who requests notice of projects of that type, location or other classification is eliminated. Also, notice is required to affected town sanitary districts, public inland lake protection and rehabilitation districts and county drainage boards.

The 3rd difference is that a mediation option is provided. There is no comparable provision in the current statute. The applicant and DNR must agree to be a party to the mediation. The mediation process is primarily expected to address issues of concern to owners of property near the proposed project. If an agreement is not reached in mediation, the parties to the mediation may request a contested case hearing.

The 4th difference is that the requirement of a substantive written objection, which is a condition for obtaining a contested case hearing under the current statute, is clarified and made more detailed. The current statute requires the objector to state why the project may violate statutory provisions applicable to the project. The purpose of this requirement is to avoid contested case hearings when there is not merit to the challenge--i.e., the facts alleged by the objector are not true or do not relate to the legal standards for granting or denying the permit. The special committee believes that the current statute, as administered by the department, has not been sufficient to avoid challenges to permits in contested case hearings that are ultimately determined to be without merit. This bill draft adds to the information that must be submitted by the

objector, allows the department to request additional information from the objector, and requires the department to do a thorough evaluation of the grounds for the objection, both legal and factual.

This provision omits the option for the department to schedule a public hearing upon receipt of an application, rather than providing notice of the application. This option is no longer necessary if the department is given authority to deny an application, as provided in this section.

SECTION 102. 30.25 of the statutes is renumbered 30.269.

SECTION 103. 30.253 of the statutes is created to read:

30.253 Permit or contract conditions. The department may impose conditions on a permit or contract under this subchapter to assure compliance with standards expressly provided in this subchapter.

SECTION 104. 30.26 of the statutes is renumbered 30.271.

SECTION 105. 30.263 (title) of the statutes is created to read:

30.263 (title) Duck Creek Drainage District.

SECTION 106. 30.263 (4) of the statutes is created to read:

30.263 (4) The drainage board for the Duck Creek Drainage District may, without a permit under s. 30.20 (3) (c), remove material from a drain that the board operates in the Duck Creek Drainage District if the removal is required, under rules promulgated by the department of agriculture, trade and consumer protection, in order to conform the drain to specifications imposed by the department of agriculture, trade and consumer protection after consulting with the department of natural resources.

NOTE: Subsection (4) is identical to current s. 30.20 (1) (d).

SECTION 107. 30.265 of the statutes, as created by 2001 Wisconsin Act 16, is renumbered 30.375.

SECTION 108. 30.265 (1) (title) of the statutes is created to read:

30.265 (1) (title) DEFINITION.

SECTION 109. 30.27 of the statutes is renumbered 30.273.

SECTION 110. 30.275 of the statutes is renumbered 30.359.

SECTION 111. 30.276 of the statutes is created to read:

30.276 Seawalls; Wolf and Fox River basins. A riparian owner is exempt from the permit requirements under s. 30.12 (3) and this section for a structure that is placed on the bed of navigable water in the Wolf River and Fox River basin area, as described in s. 30.223 (1), and that extends beyond the ordinary high-water mark, if the following conditions apply:

(1) The structure is a vertical wall designed to prevent land from eroding into navigable water.

(2) The structure is not a replacement for an existing structure and is placed on the bed of an artificial enlargement of navigable water, or the structure is a replacement for an existing structure placed on the bed of navigable water, including the bed of an artificial enlargement of navigable water.

(3) If the structure is a replacement for an existing structure placed on the bed of navigable water, including the bed of an artificial enlargement of navigable water, it is placed not more than 2 feet waterward of the structure that it is replacing.

(4) The structure incorporates adequate bracing and anchors to ensure structural stability.

(5) A filter fabric lining containing a layer of gravel extends from the landward side of the structure to facilitate drainage.

(6) The base of the structure extends to a sufficient depth into the bed of the navigable water to ensure the structure's stability and to prevent the structure from failing.

(7) The structure is secured into the bank of the navigable water in a manner that prevents erosion or scouring.

(8) The riparian owner places riprap at the base of the waterward side of the structure up to the waterline or, if the structure is placed in a location where watercraft are moored, the riparian owner places riprap at the base of the waterward side of the structure up to a point that allows adequate space for the mooring of watercraft.

(9) The structure is constructed of treated wood and built so that the top of the structure meets the lower of the following:

- (a) The natural topography of the bank of the navigable water.
- (b) A point that is 4 feet above the ordinary high-water mark of the navigable water.
- (c) The minimum height required to prevent overtopping by wave action.

NOTE: This recreates current s. 30.12 (3) (bt), which was created by 2001 Wisconsin act 16.

SECTION 112. 30.277 of the statutes is renumbered 30.361.

SECTION 113. 30.28 of the statutes is renumbered 30.243 and 30.243 (1), (2) (a) (intro.) and (b), (2m) (am), (b) and (d) and (3) (b), as renumbered, are amended to read:

30.243 (1) FEES REQUIRED. The department shall charge a permit or approval fee for carrying out its duties and responsibilities under ss. ~~30.10 to 30.205, 30.207 and 30.21 to 30.27~~ this subchapter. The permit or approval fee shall accompany the permit application, notice or request for approval.

(2) AMOUNT OF FEES. (a) For fees charged for permits and approvals under ss. ~~30.10 to 30.205 and 30.21 to 30.27~~ this subchapter, except for s. 30.223, the department shall classify the types of permits and approvals based on the estimated

time spent by the department in reviewing, investigating and making determinations whether to grant the permits or approvals. The department shall then set the fees as follows:

(b) 1. For an application for a general permit submitted under s. ~~30.207~~ 30.223 (3), the fee shall be \$2,000.

2. For a notice submitted under s. ~~30.207~~ 30.223 (7), the fee shall be \$100.

(2m) (am) The department shall refund 50% of the fee specified in sub. (2) (b) 1. if the department denies an application for a general permit under s. ~~30.207~~ 30.223 (3) (d) 1. or does not issue a general permit under s. ~~30.207~~ 30.223 (6).

(b) If the applicant applies for a permit, requests an approval, or submits a notice under s. ~~30.207~~ 30.223 (7) after the project is begun or after it is completed, the department shall charge an amount equal to twice the amount of the fee that it would have charged under this section.

(d) The department, by rule, may increase any fee specified in sub. (2) (a). The department, by rule, may increase a fee specified in sub. (2) (b) only if the increase is necessary to meet the costs incurred by the department in acting on general permits or on notices submitted under s. ~~30.207~~ 30.223.

(3) (b) This section does not apply to a permit issued under s. 30.12 ~~(3)~~ (4) (a) 2., ~~2m.~~ or 3. or 9.

SECTION 114. 30.29 of the statutes is renumbered 30.86. ✓

SECTION 115. 30.292 of the statutes is repealed.

NOTE: The repealed provision relates to parties to a violation. An identical provision that applies to ch. 30 in its entirety already exists in s. 30.99.

SECTION 116. 30.294 of the statutes is renumbered 30.975. ✓

SECTION 117. 30.298 (title) of the statutes is renumbered 30.381 (title).